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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,272	10/20/2003	Thaddeus J. Wawro	281_414	2924
20874	7590	01/11/2005	EXAMINER	
WALL MARJAMA & BILINSKI 101 SOUTH SALINA STREET SUITE 400 SYRACUSE, NY 13202			VERBITSKY, GAIL KAPLAN	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/689,272

Applicant(s)

WAWRO ET AL.

Examiner

Gail Verbitsky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

1. The specification is objected to because A) "an elongate hollow probe" has not been described in the specification, B) claim 1, lines 9-10, and claim 5, the limitation stating "switch enabling said thermometry apparatus to operate only if said ..." has not been described in the specification. Correction is required. See MPEP § 608.01(b).

### ***Drawings***

2. The drawings are objected to because "the elongated hollow well" has not been identified in the drawings. Perhaps applicant should replace the "isolation chamber" with the --elongate hollow probe well—in the description of the drawings in the specification.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 1-12 are finally rejected under 35 U.S.C. 102(a) as being anticipated by Babkes (U.S. 6634789).

Babkes discloses a device in the field of applicant's endeavor. The device comprising an elongate hollow probe well (elongate hollow probe cavity shaped to accept an elongated probe) which is a part of a removable module/ shroud 100 with an isolation chamber 140, and thus, with the isolation chamber 140, being removable from the device/ housing. The device has a switch, which enables the device to operate only

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when the isolation chamber, and thus, the elongate hollow well, is attached to the device.

For claims 1, 5: Babkes discloses in Figs. 1-2 and 4-5 a device in the field of applicant's endeavor comprising a housing 200 having a calculation unit/ thermometry assembly, a probe 161 that includes at least one temperature responsive element, an isolation chamber 140 for receiving said probe 161, said isolation chamber, along with a module (shroud) 100, is being removable from the housing 200. The device also comprises a first switch assembly for detecting the presence of an object/ module 100 including the isolation chamber (and the elongated hollow well) in the housing 200 (col. 7, lines 26-28). The first switch assembly comprising two parts (col. 7, line 26) which can be a mechanical switch (col. 7, line 51) enable the housing/ calculating unit/ thermometry assembly 200 to start operating (col. 7, line 42). This would imply, that the thermometry/ circuit board with a processing circuitry contained within the calculation unit 200, operates only when the isolation chamber 140 (and the elongated hollow well) and the module 100 are attached to the housing 200.

For claim 2: the device comprises a second switch assembly comprising a paddle indicator 145, a button 245. When the second switch assembly is on, the calculation unit/ thermometry assembly is ready for temperature measurements (col. 5, lines 20-34).

For claim 6: The second switch assembly can be an optical switch (col. 5, line 44).

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For claim 3: the fact that both, the first and second, switch assemblies are connected to the calculation unit 200, would imply that the first and second switch assemblies are interconnected by means of the calculation unit 200.

For claim 4: the module 100 is acting as a shroud assembly where the isolation chamber is inserted. As shown in Fig. 2, when the shroud 100 is being attached to the housing 200, it becomes attached to said first switch assembly by means of the button 245, which is a part of the first switch assembly.

For claim 7: the fact that the shroud assembly/ module 100 is connected/ attached to the first switch assembly, and the first switch assembly is connected/ attached to the calculation unit 200 comprising the circuit board with the processing circuitry, would imply that the shroud assembly is also connected/ attached to the circuit board.

For claim 8: Babkes discloses, as shown in Fig. 4, a rubber cover 246 to create a watertight (fluid tight) seal. Therefore, the watertight seal is provided when the isolation chamber is attached (or not).

For claims 9-12: the method steps will be met during the normal operation of the device stated above.

6. Claims 13-15 are finally rejected under 35 U.S.C. 102(a) as being anticipated by Babkes.

Babkes discloses in Fig. 5 a device in the field of applicant's endeavor. The device comprising an elongate hollow probe well 161 having an elongate hollow probe cavity shaped to accept an elongated probe (thermistor, etc.). The hollow probe well

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161 being removed from or inserted into a hollow cavity/ substantially tubular member 140 of a shroud 100 to a predetermined distance till it hits a switch/ paddle 145.

For claims 1, 5: Babkes discloses in Figs. 1-2 and 4-5 a device in the field of applicant's endeavor comprising a housing 200 having a calculation unit/ thermometry assembly, a probe 161 that includes at least one temperature responsive element, an isolation chamber 140 for receiving said probe 161, said isolation chamber, along with a module (shroud) 100, is being removable from the housing 200. The device also comprises a first switch assembly for detecting the presence of an object/ module 100 including the isolation chamber (and the elongated hollow well) in the housing 200 (col. 7, lines 26-28). The first switch assembly comprising two parts (col. 7, line 26) which can be a mechanical switch (col. 7, line 51) enable the housing/ calculating unit/ thermometry assembly 200 to start operating (col. 7, line 42). This would imply, that the thermometry/ circuit board with a processing circuitry contained within the calculation unit 200, operates only when the isolation chamber 140 (and the elongated hollow well) and the module 100 are attached to the housing 200.

For claim 2: the device comprises a second switch assembly comprising a paddle indicator 145, a button 245. When the second switch assembly is on, the calculation unit/ thermometry assembly is ready for temperature measurements (col. 5, lines 20-34).

For claim 6: The second switch assembly can be an optical switch (col. 5, line 44).

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For claim 3: the fact that both, the first and second, switch assemblies are connected to the calculation unit 200, would imply that the first and second switch assemblies are interconnected by means of the calculation unit 200.

For claim 4: the module 100 is acting as a shroud assembly where the isolation chamber is inserted. As shown in Fig. 2, when the shroud 100 is being attached to the housing 200, it becomes attached to said first switch assembly by means of the button 245, which is a part of the first switch assembly.

For claim 7: the fact that the shroud assembly/ module 100 is connected/ attached to the first switch assembly, and the first switch assembly is connected/ attached to the calculation unit 200 comprising the circuit board with the processing circuitry, would imply that the shroud assembly is also connected/ attached to the circuit board.

For claim 8: Babkes discloses, as shown in Fig. 4, a rubber cover 246 to create a watertight (fluid tight) seal. Therefore, the watertight seal is provided when the isolation chamber is attached (or not).

For claims 9-12: the method steps will be met during the normal operation of the device stated above.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

8. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

9. Claims 1-15 are finally rejected under 35 U.S.C. 102(e) as being anticipated by Knieriem et al. (U.S. 6827488) [hereinafter Knieriem]

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131. Knieriem discloses in Figs. 1-5 and the entire document, all the subject matter claimed by applicant.

For claims 9-15: the method steps will be met during the normal operation of the device stated above.

### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the



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unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claim 1 is finally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No.6827488 Knieriem et al. [hereinafter Knieriem]. Although the conflicting claims are not identical, they are not patentably distinct from each other because Knieriem, in claim 1 discloses all the subject matter claimed by applicant in claim 1.

### ***Inventorship***

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

***Response to Arguments***

13. Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection necessitated by the present amendment.

***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

Any inquiry concerning this communication should be directed to the Examiner Verbitsky who can be reached at (571) 272-2253 Monday through Friday 8:00 to 4:00 ET.

GKV

Gail Verbitsky  
Primary Patent Examiner, TC 2800



Decemver 29, 2004